

Service Date: December 6, 1995

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF The Application)UTILITY DIVISION
of the Regulated Members of)
TELEPHONE EXCHANGE CARRIERS)DOCKET NO. 94.7.25
of MONTANA (TECOM) for Revisions to)
Intrastate Carrier Access Rates and Tariffs.)ORDER NO. 5804c

FINAL ORDER

I. Introduction and Procedural Background

1. On July 6, 1994 the regulated members of Telephone Exchange Carriers of Montana (TECOM) filed an application with the Montana Public Service Commission (PSC or Commission) requesting revisions to their intrastate carrier access tariffs.¹ The three regulated members of TECOM are Lincoln Telephone Company, Project Telephone Company and Southern Montana Telephone Company.² Their application included complete new tariffs, requesting the following changes: (1) textual language changes and clarifications; (2) additions throughout the tariff to reflect Signaling System Seven (SS7);³ (3) additions to reflect industry agreements on Percent Interstate Usage (PIU) regarding jurisdictional reporting requirements; (4) additions and changes reflecting modifications necessary to create a separate Feature Group D (FGD) traffic measurement section; (5) removal of a section authorizing a \$25 special access surcharge for WATS and 800 lines and changes in the

¹TECOM is a nonprofit Montana corporation that administers access charges and distributes access charge revenues for a consortium of local exchange carriers.

²The remaining eight members of TECOM are telephone cooperatives that are not regulated by the Montana Public Service Commission.

³SS7 facilitates certain advanced telecommunications services such as 800 number portability, wide area centrex services and virtual private networks.

special access section concerning dedicated WATS and 800 lines; (6) removal of the technical specification section to avoid duplication and insure consistency between TECOM and National Exchange Carrier Association (NECA) tariffs; and (7) deletion of obsolete tariff sections entitled Additional Labor, Other Services and Special Construction.

2. TECOM also responded to the specific Commission inquiry into the need for further changes in carrier access charges by stating that TECOM required no further rate changes or restructuring other than the reductions related to WATS/800 special access surcharges and FGD channel termination and mileage.⁴ TECOM did not initially propose changing its intrastate carrier access rates and did not file supporting marginal or incremental cost analyses.

3. On July 18, 1994 the PSC issued a Notice of Application, Opportunity for Hearing, and Intervention Deadline. In response, Montana Consumer Counsel (MCC), AT&T Communications of the Mountain States (AT&T), and U S WEST Communications, Inc. (U S WEST) timely petitioned for and were granted intervention. Late intervention was granted to MCI Telecommunications Corporation (MCI) on November 7, 1994 and to Montana Independent Telephone Systems (MITS) on May 10, 1995.

4. According to the Procedural Order in this matter, a technical hearing was scheduled to begin on June 13, 1995. The Commission modified the Procedural Schedule on January 5, 1995 to allow intervenors additional time to pre-file testimony. Accordingly, the Procedural Schedule dates were continued 30 days each and the hearing was rescheduled for July 11, 1995.

5. In January 1995, TECOM and U S WEST stipulated to a reduction in TECOM's carrier access rates by \$.012 per minute over a three year period (\$.004 per minute per year to begin on January 16, 1995 and each anniversary thereafter, through and including

⁴See *In the Matter of the Application Of the Regulated Members of TECOM For Authority to Decrease Rates for Intrastate Access Services*, Docket No. 92.12.79, ORDER No. 5685a (10/27/93).

January 16, 1997). They also stipulated to further reduce access charges prospectively based on possible increases in access demand growth. Also according to this stipulation, regulated TECOM members agreed not to seek a local rate increase to offset revenues lost as a result of the intrastate access rates stipulated to in the agreement and to file for a rate review by the PSC on or before September 30, 1997, in order to establish intrastate access rates to go into effect on January 16, 1998.

6. Simultaneously with filing the stipulation, TECOM and U S WEST jointly moved the Commission to suspend the remainder of the Procedural Schedule until the Commission could hear and act upon the stipulation. AT&T objected to this motion and the motion was denied by the Commission on January 26, 1995.

II. Summary of the Arguments

7. A one-day technical hearing was held on July 11, 1995 relating to the issue of carrier access charge reductions only. TECOM, U S WEST and AT&T presented witnesses at the hearing. AT&T presented the direct and rebuttal testimony of Patricia Parker. TECOM objected to the admission of portions of Ms. Parker's testimony on the basis that such testimony constitutes hearsay and violates the "best evidence" rule.

8. The intervening parties support TECOM's proposed tariff changes but disagree on the reasonableness of TECOM's aggregate intrastate carrier access rate. Post-hearing briefs were submitted by TECOM, U S WEST and AT&T. A summary of the parties' testimony and arguments with respect to the carrier access rate issue follows.

A. TECOM and U S WEST

9. TECOM and U S WEST support a \$0.012 per minute reduction in TECOM's intrastate carrier access rates over a three-year period. Their proposed stipulation would reduce TECOM's access rates \$0.004 per minute per year with the full \$0.012 per minute reduction to become effective January 16, 1997. TECOM and U S WEST

testified that any reductions in carrier access rates must be balanced against possible local rate impacts.

10. TECOM's present intrastate carrier access rates are tariffed at \$0.093 per minute. TECOM contends that its regulated companies are not over-earning at this rate, but has agreed to reduce access rates as a recognition of an ongoing industry trend and its desire to continue downward adjustments to intrastate carrier access rates without adversely affecting their quality of service. TECOM presented evidence of a survey it conducted in 14 western and midwestern states and claims that the regulated companies' current intrastate access rates are below the average of \$.1050 for companies polled in its survey.

11. TECOM further asserts that its earnings levels have not been challenged in this docket and that any rate design changes must be revenue neutral. TECOM argues that any reduction in access charges above those included in its stipulation with U S WEST would cause local rates to increase--by as much as \$45 per month in some areas.

12. In response to data request PSC-15, TECOM stated that adopting AT&T's proposal to implement the \$.012 per minute reduction all at once would result in the regulated members filing local rate increases as part of their compliance tariffs. According to TECOM, implementing the rate reduction over a period of three years allows for growth in access minutes to offset revenue reductions associated with the lower access rates. For this reason, TECOM does not support implementing the full \$.012 per minute reduction all at once. In fact, TECOM has stated that such a reduction would force rate increases in local service charges for its customers.

13. TECOM advocates using the FCC's part 36 and 69 embedded cost studies to set intrastate carrier access rates. TECOM contends that marginal cost studies are not appropriate for small companies and that it is not considering filing marginal cost

analyses. According to TECOM, long run incremental cost (LRIC) studies are inconsistent with the Montana Telecommunications Act's vision of small telephone company regulation. If the Commission does not approve the TECOM/U S WEST stipulation in full, TECOM advocates approving the proposed TECOM tariffs in their entirety with no change in intrastate carrier access charges. TECOM argues that the Commission has no authority to pick and choose portions of the Stipulation it wishes to approve and implement; thus, only approval in full is appropriate.

B. AT&T

14. AT&T testified that FCC part 36 and 69 cost studies are an inappropriate basis for pricing because they involve arbitrary allocations of revenue requirements. AT&T objected to the stipulation between U S WEST and TECOM on grounds that the rates contained therein are not supported and would not be in the public interest. AT&T testified that the Commission will not have the information necessary to determine proper access rates until TECOM provides an analysis of the incremental costs of providing access service. AT&T supports using Total Service Long Run Incremental Costs (TSLRIC) as the basis for TECOM's carrier access rates.

15. AT&T presented testimony that, when compared with all other non-TECOM local exchange companies in Montana, TECOM's current access unit prices are the highest in the state. It claims that TECOM's unreasonably high proposed switched access rates and the disparity between TECOM's rates and U S WEST's rates will discourage interexchange carriers from entering or actively marketing their intraLATA toll services in TECOM territories, will deny rural customers the benefits of toll competition, will

encourage the de-averaging of toll rates and will invite interexchange carriers to seek alternative access suppliers.⁵

16. AT&T proposes that TECOM's access rates be reduced \$0.01 per minute per year until TECOM provides incremental cost information or until TECOM's access rates match the average access rate charged by U S WEST and PTI in Montana, whichever occurs first. Alternatively, AT&T urges the Commission to implement reductions in carrier access charges all at once rather than over a three-year period if the Commission decides to adopt TECOM's and U S WEST's stipulated rate reduction. According to AT&T, this will eliminate the administrative cost of implementing such a "minuscule" reduction over an extended period of time.

C. Other Parties

17. MCC and MITS offered no testimony in this docket. MCI sought to lend its support to the arguments and testimony of AT&T in its entirety without offering testimony or evidence of its own.

TECOM objected to this method of participation and filed a Motion to Strike from the record in this docket the correspondence from counsel representing MCI on the basis that it constituted improper testimony on behalf of MCI and violated TECOM's rights of due process. The Commission denied TECOM's Motion to Strike on April 18, 1995, concluding that MCI was not required to offer testimony on its own behalf when the testimony of AT&T supported its position as well as that of AT&T. The Commission further concluded that due

⁵U S WEST's current price is \$0.042 per minute and TECOM's current access rate is 0.093 per minute, a difference of \$0.051 per minute. AT&T Exhibit 1, p. 2.

process to TECOM was satisfied by MCI's notice of its position which is identical to AT&T's position.

III. Findings of Fact

18. On July 7, 1994, the Commission received an Application from the regulated members of TECOM requesting approval of revisions to their current tariffs. This Application asserted that no change in their current intrastate carrier access rates was then justified.

19. The Commission issued a Notice of Application, Opportunity for Hearing, and Intervention Deadline on July 18, 1994. Intervention was subsequently granted to U S WEST, AT&T, MCC, MCI and MITS. TECOM, U S WEST, and AT&T presented witnesses at a hearing on the issue of carrier access charges held on July 11, 1995. None of the other requested tariff changes have been challenged by any of the intervenors.

20. In the U S WEST/TECOM stipulation, TECOM proposes to reduce its present aggregate carrier access rate of \$0.093 per minute by a total of \$0.012 per minute over a three-year period.

This reduction of \$0.004 each year would be completely implemented by January 16, 1997, with the first two decreases effective on January 16, 1995 and January 16, 1996. The proposed reduction would result in a new aggregate carrier access charge of \$0.081 per minute.

21. In TECOM Docket No. 92.12.79, Default Order No. 5685a (dated May 3, 1993), the Commission notified TECOM regulated companies that it expected them to make an informal cost of service and rate design filing by March 1, 1994 with supporting cost data.

The Commission requested a marginal-cost analysis be conducted of TECOM's costs to provide carrier access. TECOM filed a Motion for Reconsideration dated May 29, 1993, objecting to the requirement for marginal-cost studies and instead urging that FCC Part 36 and Part 69 cost methodology is sufficient. TECOM's Motion was denied on October 27, 1993 in Order No. 5685b.

22. TECOM provided no updated cost studies to support their proposed rate decrease in Docket No. 92.12.79 and again has not provided them in this docket. Because the Commission was not provided any cost data to support the proposed rate decrease, whether or not the proposed rates exceed the relevant costs is unclear.

IV. Commission Decision

23. In Docket No. 92.12.79, the TECOM docket immediately preceding the current docket, TECOM applied to reduce its intrastate carrier access rates. In Final Order No. 5685a the Commission required TECOM to make an informal cost of service and rate design filing by March 1, 1994. In denying TECOM's motion to reconsider that order, in Order No. 5685b the Commission stated that while it "is cognizant of the complications involved in a requirement that TECOM conduct a marginal cost analysis ... the Commission remains concerned about the level of TECOM carrier access charges."

24. Despite Commission Order Nos. 5685a and 5685b, the record in this case contains no marginal or incremental cost information. Thus, the Commission is unable to make an informed, cost-based decision concerning the propriety of TECOM's current carrier access rates or any of the various access rate proposals in this docket.

25. Further, the record does not contain sufficient information to support TECOM's testimony that the regulated companies' earnings levels are reasonable and that a reduction in access charges above that to which it stipulated with U S WEST must be offset by increasing local rates.⁶ There is insufficient information in this case concerning the regulated companies' revenue requirements. TECOM does not know what if any revenue

⁶The record also does not support an assertion that the earnings levels are unreasonable. There is simply not enough evidence to make an argument one way or the other.

requirement the Commission has specified for the regulated companies and more than ten years have passed since any of the regulated companies has had a general rate case. Periodic Commission review of rate base additions, depreciation practices, affiliated interest transactions, expense items and amounts, and other operational practices are needed to assure the continued reasonableness of earnings levels and revenue requirements.

26. Despite the lack of supporting evidence for a reduction in carrier access rates,⁷ the Commission concludes that it is in the public interest to order a reduction in TECOM's carrier access charges. Such a reduction is supported by all participating parties to this proceeding including TECOM. Testimony indicates that there is a nationwide downward trend in the levels of carrier access charges and that TECOM's intrastate carrier access rates are the highest in Montana. Further, AT&T and U S WEST have indicated their intent to pass on reductions in carrier access rates to their customers.

27. Small telecommunications providers in Montana enjoy a reduced level of rate regulation. The Commission recognizes this reduced level of regulation mandated by Title 69, chapter 3, Part 9, MCA. However, the Commission must balance less intrusive regulation of these companies with its responsibility to maintain just and reasonable rates. Due to the absence of both incremental cost information and revenue requirement analyses, any rate design changes implemented in this docket will necessarily be arbitrary from a cost perspective.

28. It is the Commission's obligation to establish just and reasonable rates. Given TECOM's knowledge of the Commission's interest in assessing the reasonableness of the carrier access rates from an incremental cost perspective and the Commission

⁷Similarly, there is a corresponding lack of support for retaining the current level of intrastate carrier access charges.

directive to provide information concerning costs, TECOM was obligated to prove the reasonableness of the rates from this perspective. It is TECOM's burden to convince the Commission that approval of the TECOM/U S WEST stipulation is consistent with a finding that the rates propounded therein are just and reasonable.

Similarly, it is also TECOM's burden to convince the Commission of the same as regards their alternative proposition to leave carrier access rates at present levels. The information provided in this docket does not satisfy this burden.

29. As originally submitted the stipulation between TECOM and U S WEST proposed reducing TECOM's carrier access rates \$0.004 per minute on January 16, 1995 and again on January 16, 1996 and January 16, 1997. Under this approach, two-thirds of the rate reduction would have been implemented by January 16, 1996. Less than two months remain until the January 16, 1996 date and rates have not been reduced. Although not adopting the stipulation, the Commission finds that a \$0.008 per minute reduction should be implemented on December 16, 1995. The remaining \$0.004 per minute reduction should occur on January 16, 1997. Under the TECOM/U S WEST stipulation TECOM would have applied the first year's rate reduction to the carrier common line component of carrier access rates. Therefore, TECOM should reduce its carrier common line charge by at least \$.004 per minute.

30. The Commission remains committed to assessing the reasonableness of TECOM's access charges. If the regulated TECOM companies file offsetting local rate increases as part of their compliance tariffs in this docket, the Commission may exercise its authority under ' ' 69-3-905 and 69-3-324, MCA, to investigate, upon its own motion, the rates, tolls, charges, practices and services of each regulated TECOM company to ensure that both local exchange and carrier access rates are just and reasonable. Such investigations will necessitate marginal cost studies for carrier access and local rates as well as revenue requirement studies.

V. Conclusions of Law

1. The applicants, Lincoln Telephone Company, Project Telephone Company, and Southern Montana Telephone Company, are corporations providing regulated telecommunications services within the State of Montana and, as such, are public utilities within the meaning of ' ' 69-3-101 and -803(3), MCA.

2. The Montana Public Service Commission properly exercises its jurisdiction in this docket pursuant to ' ' 69-3-102, and -302, MCA.

3. The Commission has provided adequate public notice and opportunity for a public hearing in this matter, pursuant to the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

4. The rebuttal testimony of AT&T witness Patricia Parker beginning at page 4, at lines 7-17, was properly objected to by TECOM's counsel during the hearing in this matter. Such testimony is inadmissible as it constitutes hearsay evidence concerning which Ms. Parker either lacked personal knowledge or was otherwise unable to supply pertinent documentation. Rules 602, 801, and 1002, M.R.Evid.

5. The rates and charges approved in this docket are just and reasonable as required by ' 69-3-201, MCA.

VI. Order

1. Applicants' tariff filings incorporating textual changes and clarifications, additions to reflect SS7, additions to reflect industry agreements on PIU regarding jurisdictional reporting requirements, and additions and changes to create a separate FGD traffic measurement section; removing the \$25 special access surcharge for WATS and 800 lines and changing the special access section concerning dedicated WATS and 800 lines; removing the technical specification section; and deleting obsolete tariff sections are approved.

2. Applicants' request for approval of its Stipulation with U S WEST to decrease carrier access charges over a three-year period is denied.

3. The regulated members of TECOM are directed to reduce their intrastate carrier access charges by \$0.012 per minute. The reduction is to be implemented as follows: (1) \$0.008 per minute effective December 16, 1995, with at least \$0.004 of that amount applied to the carrier common line charge; and (2) \$0.004 per minute effective January 16, 1997.

4. Applicants are directed to file compliance tariffs with the Commission within fifteen (15) days from the service date of this Order, which incorporate all of the decisions herein. Authority to review and approve the compliance tariffs is hereby delegated to the Commission staff.

DONE AND DATED at Helena, Montana, this 5th day of December, 1995, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

NANCY MCCAFFREE, Chair

DAVE FISHER, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.